

Circuit Court for Talbot County
Case No.: C-20-FM-22-000177

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 150

September Term, 2023

ANDREA SLAUGHTER

v.

DESHAWNATIZ JOHNSON, ET AL.

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: October 3, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is a third-party custody dispute between Andrea Slaughter (Godmother), the appellant, and Deshawnatiz Johnson (Mother), the appellee, regarding L. (Child), who presently is six years old.¹ In 2018, Mother left Child in Godmother’s care. A year later, Mother granted Godmother temporary custody of Child ahead of Mother’s expected incarceration. Upon her release in 2022, Mother returned for Child. Godmother then sued Mother in the Circuit Court for Talbot County for sole physical and legal custody of Child, claiming *de facto* parenthood. Mother counterclaimed, seeking the same. After an evidentiary hearing, the court found that Godmother was not a *de facto* parent of Child and that, although exceptional circumstances existed, it was in Child’s best interest to be in Mother’s custody.

Godmother appealed, posing three questions for review, which we have rearranged and rephrased for clarity:²

¹ To protect Child’s privacy to the extent possible, we shall use relationships or initials to refer to the people involved in this case. We mean no disrespect by doing so.

² In her brief, Godmother framed her questions presented as follows:

1. Did the trial [c]ourt legally error and abuse its discretion by failing to consider and properly weigh custody factors it was required to consider when it made its custody determination in the present case?
2. Did the trial [c]ourt legally error when it failed to find and order the Appellant, Andrea Slaughter (3rd party), to be a “de facto[] parent” when the [c]ourt’s uses [sic] the best interest standard in making its custody determination?
3. Did the trial [c]ourt commit legal error when it was presented with evidence of abuse and neglect, by the Appellee towards her minor children, but it failed to comply with Maryland Rule 9-101 and Maryland Rule 9-101.1, in making its custody determination?

- I. Did the trial court err or abuse its discretion in not considering Md. Code Ann., Family Law, § 9-101 when making its custody determination?
- II. Did the trial court err or abuse its discretion in finding that Godmother was not Child’s *de facto* parent?
- III. Did the trial court err or abuse its discretion in not considering all the required custody factors when determining the best interests of Child?

For the reasons below, we shall affirm the judgment of the trial court.³

BACKGROUND

Child was born in 2017 and is the only child of Mother and Anthony Jones (Father). Mother had two other children from prior relationships. Shortly after Child was born, Mother and her three children moved into Godmother’s home. Mother had a fourth child while living there. When Child was one year old, Mother moved out of Godmother’s home with three of her children, but she left Child in Godmother’s care.

In October 2019, Mother expected she would soon be arrested. Ahead of this, Mother signed a document purporting to grant Godmother’s adult daughter temporary custody of Child while she was incarcerated. This arrangement was intended only to last until Mother was released. Father knew Child had been living with Godmother, but he did not know about this document or sign it.

Father was incarcerated beginning in 2020 through the merits hearing in this case. Mother’s incarceration did not begin until mid-2021. Mother was released in September

³ Neither Mother, nor Father, nor Child’s Best Interest Attorney participated in this appeal.

2022 and immediately picked up Child from Godmother. Godmother filed a complaint seeking custody of Child on September 9, to which Mother counterclaimed the same day.

Following a *pendente lite* hearing, the trial court granted Godmother *pendente lite* legal and physical custody of Child. The court’s order also granted Mother and Father visitation at least once per week at Godmother’s discretion.

The merits hearing took place on January 10 and 11, 2023. The trial court appointed a Best Interest Attorney for Child. Mother, Father, and Godmother all testified at trial, as did Godmother’s daughter. The court also heard testimony from social workers and employees from Child’s current and former schools. The following additional facts were adduced.

The court heard from two Dorchester County Department of Social Services (DCDSS) employees: Child Protective Services Supervisor Pamela Elliott and Child Protective Services Investigator Leah Hester. Ms. Elliott testified that DCDSS had conducted two alternative response assessments about Mother’s discipline of her children:⁴ a 2017 assessment on an allegation that Mother had hit one of her children; and a 2020 assessment on an allegation that Mother had grabbed one of her children’s arms and cursed at them in the presence of school staff.

Ms. Elliott also testified that DCDSS had conducted two Child Protective Services investigations of Mother. The first, in February 2021, concerned the fact that one of

⁴ Ms. Elliott testified that alternative response assessments do not have “findings,” as investigations do. Instead, a DCDSS employee meets with the parent(s) concerning the allegations and discusses with them alternative ways to keep the allegations from reoccurring.

Mother’s children had received an unexplainable shoulder injury and a black eye. DCDSS found an indication of neglect by Mother but took no further action. Soon after, in May 2021, DCDSS investigated the untimely death of Mother’s fourth child. This investigation also found an indication of neglect, and DCDSS implemented a Safety Plan that required Mother to place her children in the care of others while DCDSS conducted its investigation. The Plan terminated upon Mother’s incarceration. None of DCDSS’s contacts with, or investigations of, Mother were related to Child.

Upon Mother’s release, DCDSS assessed her home and discussed the services available to her. Ms. Hester testified that Mother keeps a “[v]ery clean” household, and her children are always clean and properly clothed. Ms. Hester also testified that Mother has cooperated with DCDSS and even sought services from them. Ms. Hester added that Child and his siblings have a “[v]ery healthy[,] . . . very good bond” with each other and Mother. Ms. Hester also stated that Child being in Mother’s care does not cause her any concern.

The court also heard from a Talbot County Department of Social Services (TCDSS) employee: Child Protective Services Investigator Leah Borkowski. Ms. Borkowski testified that she conducted an alternative response assessment in December 2022 concerning two allegations. *First*, that Godmother had shoved Child, causing him to fall and burst open his lip. And *second*, that Godmother did not dress Child in proper clothes for the weather. Ms. Borkowski visited Godmother’s home twice, and she observed nothing that would cause concern about Godmother being Child’s primary caretaker.

Several employees from Child’s current and former schools also testified. Each testified about the strong bond they had observed between Child and his siblings. Child’s

siblings regularly seek out school staff to ask about Child. One teacher testified that one of Child's siblings has struggled since Child was removed from the school.

The court also heard testimony from both parties. Godmother testified that she and Child have a very close relationship and that she loves Child like her own. Godmother alleged that Mother verbally abuses her children; specifically, that Mother calls Child ugly and tells one of Child's siblings that nobody wants them. Godmother's daughter also testified and alleged that Mother physically and mentally abused her children.

Mother acknowledged the strong bond between Child and Godmother, and she testified that it would be in Child's best interest to maintain that relationship. Mother provided evidence that she completed an anger management class and parenting classes before trial. Mother also obtained a job training certification that will allow her to work in construction as a flagger.

Godmother and Mother both also offered conflicting testimony of an incident that occurred on December 25, 2022, when the parties met to exchange Child. Godmother and Mother testified that they got into a heated argument when Godmother removed Child's hat and gloves when Mother dropped them off. Godmother added that, afterward, Mother almost caused a collision by pulling in front of her car and stopping abruptly. Mother denied the reckless driving accusation. Mother testified that she had not seen Child since the incident despite her repeated attempts.

Following the merits trial, the court rejected Godmother's arguments that she was a *de facto* parent and that Mother was unfit to have custody. The court agreed, however, that extraordinary circumstances existed. Even so, it determined that Child's best interest would

be served by granting primary physical and sole legal custody to Mother. A written custody order was entered on March 2, 2023. This timely appeal followed.

We will include additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

We review a case tried without a jury “on both the law and the evidence” and “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, [giving] due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court.” *E.N. v. T.R.*, 474 Md. 346, 370 (2021) (cleaned up).

In child custody cases, the child’s best interests “guides the trial court in its determination, and in our review” and “is always determinative.” *Santo v. Santo*, 448 Md. 620, 626 (2016) (cleaned up). “We review a trial court’s custody determination for abuse of discretion.” *Id.* at 625. This deferential standard is appropriate “because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child[.]” *Burak v. Burak*, 455 Md. 564, 617 (2017) (cleaned up). An abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court,” when the court acts “without reference to any guiding rules or principles[.]” or where “the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[.]” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (cleaned up). “[A]n abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case.” *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

DISCUSSION

I. Section 9-101 of the Family Law Article

Godmother first contends that the trial court had reasonable grounds to believe that Child’s siblings had been abused or neglected by Mother. She argues that it erred in not making an explicit finding about whether abuse or neglect was likely to occur if custody was granted to Mother, as required by § 9-101. But “an appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). And Godmother never mentioned § 9-101 in the trial court—in either the *pendente lite* hearing or the merits trial. She has therefore waived her right to raise it on appeal. *See In re Adoption No. 12612*, 353 Md. 209, 231 (1999).

II. De Facto Parenthood

We next turn to Godmother’s contention that she should have been found Child’s *de facto* parent. “The fundamental liberty interests of parents provide the constitutional context that looms over any judicial rumination on the question of custody or visitation.” *Barrett v. Ayres*, 186 Md. App. 1, 17 (2009) (cleaned up). “[T]he rights of parents to direct and govern the care, custody, and control of their children is a fundamental right protected by the Fourteenth Amendment of the United States Constitution.” *Conover v. Conover*, 450 Md. 51, 60 (2016). That said, “[t]he primary goal of access determinations in Maryland is to serve the best interests of the child.” *Id.*

Between parents, neither one has a superior claim to the right to custody, and the issue is decided solely on the best interests of the child. *McDermott v. Dougherty*, 385 Md. 320, 353 (2005). Between a fit parent and a third party, however, the playing field is not

equal with respect to rights to “care, custody, and control” of the children.” *Conover*, 450 Md. at 60. As our Supreme Court explained: “The parent is asserting a fundamental constitutional right. The third party is not.” *Id.* (cleaned up). “Where parents claim the custody of a child, there is a *prima facie* presumption that the child’s welfare will be best subserved in the care and custody of [their] parents rather than in the custody of others, and the burden is then cast upon the parties opposing them to show the contrary.” *McDermott*, 385 Md. at 424 (cleaned up). *See also B.O. v. S.O.*, 252 Md. App. 486, 504 (2021) (Even a related third party, such as a grandparent, ““has no fundamental constitutional right to raise the children of others.”” (quoting *McDermott*, 385 Md. at 353)).

In Maryland, there are two avenues for a third party to attain equal footing in a custody dispute. The first avenue is to establish qualification as a *de facto* parent, *i.e.*, “a party who claims custody or visitation rights based upon the party’s relationship, in fact, with a non-biological, non-adopted child.” *Conover*, 450 Md at 62 (cleaned up). To qualify as a *de facto* parent, a party must satisfy a four-part test showing that they occupied a parental role in the child’s life with the consent and encouragement of the child’s parent(s). This test, which was “narrowly tailored to avoid infringing upon the parental autonomy of a legal parent[,]” is as follows:

- (1) that the biological or adoptive parent consented to, and fostered, the petitioner’s formation and establishment of a parent-like relationship with the child;
- (2) that the petitioner and the child lived together in the same household;
- (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child’s care, education and development, including contributing towards the child’s support, without expectation of financial compensation; and

(4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Id. at 74.

“[T]hese factors set forth a high bar for establishing *de facto* parent status, which cannot be achieved without knowing participation by the biological parent.” *Id.* The *de facto* parenthood doctrine is not inconsistent with a parent’s right to direct the care and custody of the parent’s child because “a legal parent does not have a right to voluntarily cultivate their child’s parental-type relationship with a third party and then seek to extinguish it.” *Id.* at 75. When a legal parent permits a person to develop a parent-like relationship with a child, “the legal parent’s rights to unilaterally sever that relationship are necessarily reduced.” *Id.* (cleaned up). *See also Kpetigo v. Kpetigo*, 238 Md. App. 561, 573 (2018) (If a parent has made “a conscious parenting decision to foster a parent-caliber relationship between a third party and [the] child[,]” then the “parent’s consent to a prior and intentional parental relationship counterbalances (or supersedes) [their] otherwise preemptive right to determine whether and to what extent another adult is involved in [the] child’s life[.]”).

If a third party establishes *de facto* parenthood, that person is deemed to have status equal to a biological or adoptive parent in custody determinations. *Caldwell v. Sutton*, 256 Md. App. 230, 267 (2022). A court then analyzes the best interests of the child to determine custody. *Id.*

If the third party cannot establish *de facto* parenthood, they are confined to the second avenue to obtain custody. Absent *de facto* parenthood, Maryland courts require

third parties seeking custody to overcome the presumption that the child’s best interests is to be in the parent’s custody by proving either that the child’s natural parents are unfit to have custody or that there are exceptional circumstances making parental custody detrimental to the best interest of the child. *Conover*, 450 Md. at 61. “In custody cases, unfitness means an unfitness to have custody of the child, not an unfitness to remain the child’s parents; exceptional circumstances are those that would make parental custody detrimental to the best interest of the child.” *E.N.*, 474 Md. at 372 (cleaned up). A trial court will not “consider whether [the] third party should be awarded custody under the best interests of the child standard” unless that third party first shows unfitness or exceptional circumstances. *Basciano v. Foster*, 256 Md. App. 107, 132 (2022). But, as with *de facto* parenthood, if a third party establishes unfitness or exceptional circumstances, they have rebutted the presumption favoring custody in a biological parent over a third party when it comes to the best interests of the child analysis. *Conover*, 450 Md. at 61.

With this general background, we turn to the analysis here.

The trial court found that Godmother failed to establish *de facto* parenthood because, although Mother consented to a parent-like relationship between Godmother and Child, Father had not. And “a prospective *de facto* parent must demonstrate that *both* legal parents consented to and fostered a parent-like relationship with a child[.]” *E.N.*, 474 Md. at 355 (emphasis added). Godmother contends that the trial court erred in its holding because Father impliedly consented through his actions. We need not decide this issue, however, because the trial court determined that exceptional circumstances existed. As just discussed, this has the same legal effect as establishing *de facto* parenthood—*i.e.*, it places

the third party on equal footing with the biological parents in the custody analysis. *See Conover*, 450 Md. at 61. Thus, even if the court’s determination on Father’s lack of consent was error, it was harmless. *See J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021).

III. Best Interests of the Child

Finally, we turn to Godmother’s contention that the trial court overlooked relevant factors when making its custody determination. Once a third party establishes exceptional circumstances, thereby rebutting the presumption favoring custody in a biological parent over a third party, the trial court must determine whether the best interests of the child favor custody with the parent or the third party. *Conover*, 450 Md. at 61. The Maryland appellate courts have encouraged the circuit courts to consider several factors in deciding the best interests of the child. *See Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977) (setting out 10 non-exhaustive factors for a trial court to consider in any custody award), and *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986) (adding factors for consideration). To the extent a factor applies to a given case, the circuit court must consider it. *See Azizova v. Suleymanov*, 243 Md. App. 340, 345–46 (2019) (identifying 21 factors that the Supreme Court and this Court have identified as “factors that a court *must* consider when making custody determinations,” as well as nine additional “factors that courts are encouraged to consider” (emphasis added)).

Here, after finding exceptional circumstances, the trial court went on to address Child’s best interest as if the dispute were between parents on equal footing, as the law requires. After making this determination, however, the court considered only the 10 *Sanders* factors. Godmother maintains that this was insufficient. She contends the court

committed reversible error by overlooking three custody factors: (1) the character and reputation of the parties; (2) the ability of each party to maintain a stable and appropriate home for the child; and (3) the potential disruption of the child’s social and school life. We disagree.

For starters, the court expressly listed “the character and reputation of the parties” as one of the factors it considered. To be sure, the court did not use the words “character and reputation” in its subsequent application of the law, but it also was not required to do so. Godmother, in essence, argues that the court’s analysis of this factor should have been more detailed. But “even where the trial court must issue a statement explaining the reasons for its decision, the court need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis.” *Gizzo v. Gerstman*, 245 Md. App. 168, 195–96 (2020).

What is more, Godmother has not explained how either of the other factors might have altered the court’s best interest analysis had it expressly considered them. For example, although the court did not expressly address “the ability of each party to maintain a stable and appropriate home for the child,” the court’s opinion discussed both party’s living arrangements and method of earning income. And although the court did not phrase its analysis in terms of “the potential disruption to the child’s social and school life,” the court discussed the testimony of Child’s current and former teachers. And it relied on this testimony when discussing what it found to be the most important aspect of its custody determination: Child’s close bond with his siblings, who reside with Mother.

At bottom, Godmother argues only the facts, maintaining, for example, that the court should have made a negative finding about Mother’s character based on her criminal record. But Godmother has not pointed to any first-level factual findings that are clearly erroneous, and we see none. We defer to the court in its interpretation of facts that are not clearly erroneous, its assessments of credibility, and its exercise of discretion, which in this case does not meet the onerous test for abuse. In sum, Godmother has not shown reversible error in the trial court’s consideration of factors relevant to the best interests analysis in making its custody determinations.

**JUDGMENT OF THE CIRCUIT
COURT FOR TALBOT COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**